

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
GALVESTON DIVISION**

KATIE MAPLES,  
*Plaintiff,*

v.

UNIVERSITY OF TEXAS MEDICAL  
BRANCH AT GALVESTON.  
*Defendant.*

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CIVIL ACTION No. 3:10-cv-00552

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**DEFENDANT UNIVERSITY OF TEXAS MEDICAL BRANCH AT GALVESTON’S ORIGINAL  
ANSWER AND AFFIRMATIVE AND OTHER DEFENSES TO PLAINTIFF’S ORIGINAL  
COMPLAINT**

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TO THE HONORABLE KENNETH HOYT, UNITED STATES DISTRICT JUDGE:

Defendant University of Texas Medical Branch at Galveston (“UTMB”) hereby files its Original Answer and Affirmative and Other Defenses to Plaintiff’s Original Complaint and respectfully shows the Court the following:

**I.  
ORIGINAL ANSWER**

Subject to its affirmative and other defenses, UTMB pleads as follows to the specific allegations of Plaintiff’s Original Complaint:

**Jurisdiction and Venue**

1. UTMB admits that the Court has jurisdiction over this case as alleged in Paragraph 1 of Plaintiff’s Original Complaint, but denies that it engaged in any unlawful conduct and/or that Plaintiff is entitled to any recovery.

2. UTMB admits that the Court has jurisdiction over this case as alleged in Paragraph 2 of Plaintiff's Original Complaint, but denies that it engaged in any unlawful conduct and/or that Plaintiff is entitled to any recovery.

### Parties

3. UTMB admits that Plaintiff was a student at the University of Texas Medical Branch at Galveston, School of Health Professions as alleged in Paragraph 3 of Plaintiff's Original Complaint. UTMB denies the remaining allegations of Paragraph 3 of Plaintiff's Original Complaint as drafted.

4. UTMB admits that the allegations contained in Paragraph 4 of the Plaintiff's Original Complaint.

5. UTMB lacks sufficient knowledge and/or information to admit or deny the allegations contained in Paragraph 5 of the Plaintiff's Original Complaint, and thus denies same.

### Facts

#### Rehabilitation Act Claim

6. UTMB admits that the allegations contained in Paragraph 6 of the Plaintiff's Original Complaint.

7. UTMB admits that the allegations contained in Paragraph 7 of the Plaintiff's Original Complaint.

8. UTMB lacks sufficient knowledge and/or information to admit or deny the allegations contained in Paragraph 8 of the Plaintiff's Original Complaint, and thus denies same.

9. UTMB lacks sufficient knowledge and/or information to admit or deny the allegations contained in Paragraph 9 of the Plaintiff's Original Complaint, and thus denies same.

10. UTMB lacks sufficient knowledge and/or information to admit or deny the allegations contained in Paragraph 10 of the Plaintiff's Original Complaint, and thus denies same.

11. UTMB admits that during the Fall 2008, Plaintiff made one (1) A, four (4) B's, and one (1) C, which resulted in a 3.0 GPA. UTMB lacks sufficient knowledge and/or information to admit or deny the remaining allegations contained in Paragraph 10 of the Plaintiff's Original Complaint, and thus denies same.

12. UTMB admits that Plaintiff requested additional time to take examinations and a distraction free environment to take examinations.

13. UTMB admits that in or about November 2008, UTMB approved Plaintiff's request for 1.5 time for taking written examinations and a quiet and distraction free environment to take examinations.

14. UTMB lacks sufficient knowledge and/or information to admit or deny the allegations contained in Paragraph 14 of the Plaintiff's Original Complaint, and thus denies same.

15. UTMB lacks sufficient knowledge and/or information to admit or deny the allegations contained in Paragraph 15 of the Plaintiff's Original Complaint, and thus denies same.

16. UTMB lacks sufficient knowledge and/or information to admit or deny the allegations contained in Paragraph 16 of the Plaintiff's Original Complaint, and thus denies same.

17. UTMB lacks sufficient knowledge and/or information to admit or deny the allegations contained in Paragraph 17 of the Plaintiff's Original Complaint, and thus denies same.

18. UTMB denies the allegations contained in Paragraph 18 of Plaintiff's Original Complaint as drafted.

19. UTMB admits the allegations contained in Paragraph 19 of Plaintiff's Original Complaint.

20. UTMB lacks sufficient knowledge and/or information to admit or deny the allegations contained in Paragraph 20 of the Plaintiff's Original Complaint, and thus denies same.

21. UTMB lacks sufficient knowledge and/or information to admit or deny the allegations contained in Paragraph 21 of the Plaintiff's Original Complaint, and thus denies same.

22. UTMB admits that Plaintiff received a final grade of C in Pharmacology, PHAS 5402. UTMB admits that Plaintiff received a final grade of B in Diagnostic Methods, PHAS 5202. UTMB admits that Plaintiff received a final grade of A in Clinical Psychiatry, PHAS 5201. UTMB admits that Plaintiff received a final grade of B in Pathophysiology II, PHAS 5206. UTMB admits that Plaintiff received a final grade of B in Clinical Medicine III, PHAS 5205. UTMB admits that Plaintiff received a final grade of C in Clinical Pharmacology. UTMB lacks sufficient information to admit or deny that Plaintiff failed Exam 4 without medication and/or that Plaintiff's medication was refilled by a private doctor as alleged in Paragraph 22 of Plaintiff's Original Complaint, and thus denies same. UTMB denies the remaining allegations contained in Paragraph 22 of Plaintiff's Original Complaint as drafted.

23. UTMB denies the allegations contained in Paragraph 23 of Plaintiff's Original Complaint as drafted.

24. UTMB admits the allegations contained in Paragraph 24 of Plaintiff's Original Complaint.

25. UTMB denies the allegations contained in Paragraph 25 of Plaintiff's Original Complaint.

26. UTMB admits the allegations contained in Paragraph 26 of Plaintiff's Original Complaint.

27. UTMB denies the allegations contained in Paragraph 27 of Plaintiff's Original Complaint as drafted.

28. UTMB denies the allegations contained in Paragraph 28 of Plaintiff's Original Complaint as drafted.

29. UTMB denies the allegations contained in Paragraph 29 of Plaintiff's Original Complaint as drafted.

30. UTMB lacks sufficient knowledge and/or information to admit or deny the allegations contained in Paragraph 30 of the Plaintiff's Original Complaint, and thus denies same.

31. UTMB denies the allegations contained in Paragraph 31 of Plaintiff's Original Complaint as drafted.

32. UTMB lacks sufficient knowledge and/or information to admit or deny the allegations contained in Paragraph 32 of the Plaintiff's Original Complaint, and thus denies same.

33. UTMB denies the allegations contained in Paragraph 33 of Plaintiff's Original Complaint as drafted.

34. UTMB lacks sufficient knowledge and/or information to admit or deny the allegations contained in Paragraph 34 of the Plaintiff's Original Complaint, and thus denies same.

35. UTMB admits the allegations contained in Paragraph 35 of Plaintiff's Original Complaint.

36. UTMB admits that Plaintiff submitted her paper over a month late, on April 5, 2010, and, as a result, she received a grade of zero. UTMB lacks sufficient knowledge and/or information to admit or deny the remaining allegations contained in Paragraph 36 of the Plaintiff's Original Complaint, and thus denies same.

37. UTMB admits that Plaintiff was informed that she was being dismissed from the program as alleged in Paragraph 37 of Plaintiff's Original Complaint.

38. UTMB lacks sufficient knowledge and/or information to admit or deny the allegations contained in Paragraph 38 of the Plaintiff's Original Complaint, and thus denies same.

39. UTMB admits that Plaintiff appealed the dismissal, but denies the remaining allegations contained in Paragraph 39 of Plaintiff's Original Complaint as drafted.

40. UTMB admits that on May 19, 2010, Plaintiff appealed the Student Grievance and Appeal Committee's decision. UTMB further admits that on May 27, 2010, Elizabeth J. Protas, Vice President and Dean, affirmed Plaintiff's dismissal.

41. UTMB lacks sufficient knowledge and/or information to admit or deny the allegations contained in Paragraph 41 of the Plaintiff's Original Complaint, and thus denies same.

42. UTMB admits that, at the time of Plaintiff's termination from the program, her grade point average was 3.11. UTMB admits that the School of Health Professions Bulletin 2009-2010 includes the Master's Students Subject to Dismissal policy. UTMB further admits that the Master's Students Subject to Dismissal policy provides that students are subject to dismissal if they: earn a grade of "C" or below while on academic probation; earn a final course grade of "F" during any given registration period; earn a grade of "C" in two courses in the same or different semesters; receive a second grade of "W" or "I" in the same course; receive a second unsatisfactory grade while on academic probation; fail to achieve a 3.0 GPA or above for the term they are on academic probation; or fail to meet any of the conditions under which they were admitted to the program.

43. UTMB denies the allegations contained in Paragraph 43 of Plaintiff's Original Complaint as drafted.

44. UTMB admits the allegations contained in Paragraph 44 of Plaintiff's Original Complaint.

#### Casual Connection between Disability and Plaintiff's Treatment at the University

45. UTMB admits that Plaintiff requested additional time to take examinations and a distraction free environment to take examinations but denies the remaining allegations of Paragraph 45 of Plaintiff's Original Complaint as drafted.

46. UTMB denies the allegations contained in Paragraph 46 of Plaintiff's Original Complaint as drafted.

47. UTMB denies the allegations contained in Paragraph 41 of Plaintiff's Original Complaint as drafted.

48. UTMB admits the allegations contained in Paragraph 48 of Plaintiff's Original Complaint.

49. UTMB denies the allegations contained in Paragraph 49 of Plaintiff's Original Complaint.

50. UTMB denies the allegations contained in Paragraph 50 of Plaintiff's Original Complaint as drafted.

51. UTMB lacks sufficient knowledge and/or information to admit or deny the allegations contained in Paragraph 51 of the Plaintiff's Original Complaint, and thus denies same.

52. UTMB denies the allegations contained in Paragraph 52 of Plaintiff's Original Complaint as drafted.

53. UTMB denies the allegations contained in Paragraph 53 of the Plaintiff's Original Complaint as drafted.

54. UTMB denies the allegations contained in Paragraph 54 of the Plaintiff's Original Complaint.

55. UTMB denies the allegations contained in Paragraph 55 of Plaintiff's Original Complaint as drafted.

56. UTMB denies the allegations contained in Paragraph 56 of Plaintiff's Original Complaint as drafted.

57. UTMB denies the allegations contained in Paragraph 57 of Plaintiff's Original Complaint as drafted.

58. UTMB denies the allegations contained in Paragraph 58 of Plaintiff's Original Complaint as drafted.

59. UTMB denies the allegations contained in Paragraph 59 of Plaintiff's Original Complaint.

60. UTMB admits that Plaintiff's grade was changed. UTMB lacks sufficient knowledge and/or information to admit or deny the allegations contained in Paragraph 60 of the Plaintiff's Original Complaint, and thus denies same.

61. UTMB admits that Plaintiff's grade was changed. UTMB denies the remaining allegations contained in Paragraph 61 of Plaintiff's Original Complaint as drafted.

62. UTMB denies the allegations in Paragraph 62 of Plaintiff's Original Complaint.

63. UTMB admits that Plaintiff prays for the requested relief as alleged in Paragraph 63 of Plaintiff's Original Complaint but denies that it engaged in any unlawful conduct and/or that Plaintiff is entitled to any recovery.

64. UTMB admits that Plaintiff prays for the requested relief as alleged in Paragraph 64 of Plaintiff's Original Complaint but denies that it engaged in any unlawful conduct and/or that Plaintiff is entitled to any recovery.

## **II. DEFENDANT'S AFFIRMATIVE DEFENSES**

Pleading further, Defendant UTMB asserts that it is entitled to the following affirmative defenses:

1. UTMB asserts the defense of Eleventh Amendment immunity to all claims to which that defense applies.

2. UTMB asserts the defense of sovereign immunity to all claims to which that defense applies.

3. UTMB asserts the defense of the failure to exhaust administrative remedies to all claims to which that defense applies.



4. UTMB asserts the defense of limitations for any claims outside of the applicable limitations period and for Plaintiff's violations of any other timeliness requirements stated under the applicable statutes.

5. UTMB asserts the defense of the failure to mitigate damages, if any, to all claims to which that defense applies.

6. UTMB asserts that any and all actions taken against the Plaintiff were taken for legitimate, non-discriminatory and non-retaliatory reasons.

7. UTMB asserts that it would have taken the same actions with respect to Plaintiff regardless of the Plaintiff's alleged disability, or alleged protected activity.

8. UTMB asserts that any alleged damages, which are denied, are subject to applicable statutory caps.

9. UTMB asserts that at all relevant times, it acted in good faith and in compliance with the law.

10. Plaintiff's Original Complaint fails, in whole or in part, to state a cause of action against UTMB upon which relief can be granted.

11. Plaintiff's alleged damages, if any, are the result of, and directly related to, Plaintiff's own conduct, actions, and/or failure to act, and not of UTMB's conduct, actions, and/or failure to act.

12. Plaintiff's acts or omissions were the sole proximate cause or a proximate cause of Plaintiff's damages, if any.

13. UTMB asserts that Plaintiff is not an individual with a disability as defined by the ADA.

14. UTMB asserts that Plaintiff cannot demonstrate that she possessed a substantial limitation as required by the ADA or that her alleged disability affected a major life activity as

required by the ADA.

15. UTMB asserts that Plaintiff is not a qualified individual within the meaning of the ADA.

16. UTMB asserts that Plaintiff could not, with or without reasonable accommodation, perform the essential functions of her position.

17. UTMB asserts that Plaintiff was provided reasonable accommodations and that any additional accommodations would have imposed an undue hardship upon UTMB.

18. Subject to further discovery, Plaintiff's claims are barred, in whole or in part, by virtue of the after-acquired evidence doctrine.

19. Subject to further discovery, UTMB asserts the defenses of consent, ratification, waiver, and estoppel.

20. UTMB asserts the right to amend these affirmative defenses to assert additional defenses as they may become known to UTMB.

Respectfully submitted,

GREG ABBOTT  
Attorney General of Texas

DANIEL T. HODGE  
First Assistant Attorney General

BILL COBB  
Deputy Attorney General for Civil Litigation

DAVID C. MATTAX  
Director of Defense Litigation

ROBERT B. O'KEEFE  
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/s/ Erika M. Laremont  
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**Attorneys for Defendant**

**CERTIFICATE OF SERVICE**

I hereby certify that on the 28<sup>th</sup> day of February, 2011, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

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/s/ Erika M. Laremont  
**ERIKA M. LAREMONT**  
Assistant Attorney General